



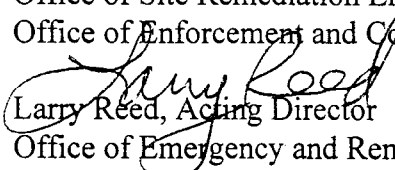
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL - 7 2000

OSWER Directive No. 9200.0-33 - J

MEMORANDUM

SUBJECT: Transmittal of Final FY00 - FY01 Superfund Reforms Strategy, OSWER
Directive No. 9200.0-33

FROM: Barry N. Breen, Director
Office of Site Remediation Enforcement
Office of Enforcement and Compliance Assurance

Larry Reed, Acting Director
Office of Emergency and Remedial Response
Office of Solid Waste and Emergency Response

TO: Superfund National Policy Managers (Regions I - X)
Regional Counsel (Regions I - X)

Attached is the final Super-fund Reforms Strategy for the remainder of fiscal year 2000 and for 2001. Thank you for taking the time to review and comment on the May 17, 2000 draft strategy document. This document should be helpful to both Headquarters and Regions as we continue to move forward with our implementation of the Reforms.

If you have any question related to the strategy, please contact Bill Ross at 703-603-8798 on the program related reforms, and Victoria van Roden at 202-564-4268 on the enforcement related reforms.

Attachment

cc: Tim Fields, OSWER
Steven Herman, OECA
Michael Shapiro, OSWER



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FINAL SUPERFUND ADMINISTRATIVE REFORMS STRATEGY

FY 2000 - 2001

PURPOSE

The purpose of the Superfund Administrative Reforms Strategy is to highlight accomplishments that can be attributed to the Reforms, and identify priorities for continuous improvement and ongoing implementation for the remainder of FY 2000 and FY 2001. We expect the program's commitment to reforms to be sustained – especially since many have now been folded into the base program – and we are asking the Regions to focus on consistent implementation of the reforms. Moreover, we want to reaffirm to our outside stakeholders the Agency's commitment to reforms, and emphasize again their importance to the Superfund program.

BACKGROUND

The Super-fund program is working • cleaning up hundreds of hazardous waste sites and protecting public health and the environment. Since announcing the first round of reforms in 1993, the Agency has made Superfund a fundamentally different and better program. Through the combined efforts of Headquarter's staff and the Regions, EPA has implemented three rounds of reforms that promote timely and cost-effective cleanup choices, promote reducing litigation and transaction costs, ensure that states and communities are informed and involved in cleanup decisions, and promote economic redevelopment. Through reform efforts, the Superfund program is protecting public health and the environment in a way that is faster, fairer, and more efficient.

The reform initiatives have changed the way that we implement the Superfund program. Many of the reforms have become standard practice and integrated into the base program. Many have been incorporated into targets and measures under the Government Performance and Results Act (GPRA) or the Superfund Program Implementation Manual (SPIM). The success of the reforms has also provided an opportunity to introduce other initiatives that complement the accomplishments achieved under the reforms while continuing to promote continuous improvement. Continued implementation of the reforms and other program improvement initiatives across the Regions is a high priority for the Superfund program.

We want to take this opportunity to thank you, and your staff, for the dedication and hard work you have devoted to implementing the Superfund reforms over the years. It is because of your leadership and tireless efforts that the reforms are now part of the way we do business. Regional managers and staff are on the “front lines” with stakeholders on a daily basis, and your actions have dramatically changed the public debate about Superfund.

ACCOMPLISHMENTS

Superfund Administrative Reforms Accomplishments

As of May 2000, EPA had completed actions needed to implement 59 of the 62 reform initiatives. In addition, the Agency has implemented actions to improve several reforms, beyond the initial intent of the reform. Implementation of these reforms has resulted in numerous policy and guidance documents that provide a comprehensive framework to guide program performance. Many reforms have resulted in measurable outputs (generally, the frequency a reform has been used) and outcomes (tangible benefits accruing to EPA or external stakeholders) that can be tracked and reported. Together, the 62 reform initiatives have fundamentally changed the program, resulting in program performance that is faster, fairer and more efficient. Stakeholders have commented that Super-fund is substantially different, that the program is more cost conscious, and that the Agency has more constructive relationships with PRPs and is more committed to fairness, which are indicative of stakeholder satisfaction in redirecting the program.

Reform accomplishments in critical program areas include the following:

- The Reforms have reinforced the importance of completing construction at sites. As of FY 1999, EPA had achieved construction completion status at 670 National Priority List (NPL) sites. This exceeded the goal of 650 construction completions, which EPA originally expected to be reached by the end of FY 2000. Over the last five years alone, the Agency, along with our State and Tribal partners, other Federal agencies, and community groups, has completed construction at 392 sites or 58% of the 670 sites completed through the end of FY 99. Responsible parties continue to play a lead role, implementing remedies at more than 70% of the construction completion sites. In addition to completions, more than 460 NPL sites have cleanup construction underway. Finally, over 1000 NPL sites have final cleanup plans approved.
- Construction completions have resulted in measurable outcomes benefitting human health and the environment. "Environmental Indicators" show that Superfund response actions continue making progress in reducing both human health and ecological risks. The Superfund program has cleaned over 2 16 million cubic yards of hazardous soil, solid waste and sediment, and over 325 billion gallons of hazardous liquid-based waste, ground water and surface water. The program has supplied over 43 1 thousand people with alternative water supplies to protect them from contaminated water, and over 22 thousand people have been relocated in instances where contamination posed the most serious threats.
- Through enforcement actions with Potentially Responsible Parties (PRPs), the Agency has obtained over \$16 billion in commitments to do response work and

reimburse Agency costs. The “Enforcement First” reform has resulted in PRPs performing or paying for more than 70% of long term cleanups, thereby conserving fund dollars. The settlement process has been facilitated through reforms including offers of orphan share compensation at 98 sites totaling \$175 million, and by removing over 2 1,000 small contributors from the liability system through more than 430 *de minimus* settlements. In addition, 133 special accounts have been established collecting over \$486 million and accruing over \$85 million in interest. Tangible outcomes from these reforms include millions of dollars in potential cost savings or cost avoidance to PRPs willing to enter into settlement agreements with the Agency.

Several enforcement reforms have been expanded in response to stakeholder feedback. Orphan share offers of compensation are now available to cost recovery parties in addition to work parties. Special Accounts have been successfully established in all Regions, and now, this reform has been expanded to make these funds available to settling private parties for response work. The cumulative amount of funds disbursed through FY 99 is over \$191 million. Continuing our commitment to shield small volume parties from third-party suits, the *de minimus* reform has been expanded by developing model settlement language where private parties waive their rights to pursue these minuscule waste volume contributors.

Reforms also have led to more cost efficient cleanups. The National Remedy Review Board (NRRB) has completed reviews of 43 potentially high cost remedies and provided recommendations that will result in estimated future savings of over \$60 million. Actions to enhance the effectiveness of the NRRB include expanding the level of input from PRPs and including high cost removals within the scope of projects to be reviewed by the Board. Remedy Updates, using advances in science and technology to improve previously selected remedies, have been completed for nearly 300 remedies with estimated future savings of \$1.3 billion. Finally, the NRRB, the remedy update process, and other remedy selection guidance developed under related Reforms have had the cumulative impact of continuing to raise cost consciousness across the Super-fund program.

EPA has taken significant actions in refining the policy framework for the response program. Numerous reforms have led to new or updated guidance to support remedy selection. Examples include the Future Land Use Directive, several Presumptive Remedy Guides, Rules of Thumb Guide, Role of Cost Guide, Lead directives, and standard reporting formats for risk assessments. These documents serve to reinforce program expectations as defined in the National Contingency Plan and thereby enhance consistency of implementation across the program. The guides also provide tools to accelerate cleanups and promote cost effectiveness.

Reforms have facilitated economic redevelopment across the country. Specific actions include the award of 305 brownfield assessment and 68 revolving loan fund pilot grants, and the selection of 16 show case communities. These pilots have resulted in the assessment of over 1900 properties, cleanup of 120 properties, and redevelopment of 169 properties. Over 5,800 jobs have been generated, and pilot communities report a leveraged economic benefit of about \$1.9 billion. In addition, the Agency and its State and Tribal partners have assessed over 40,000 sites and archived nearly 32,000 CERCLIS sites that are no longer of federal interest. Finally, the Agency has completed 110 Prospective Purchaser Agreements (PPAs), providing liability relief and paving the way for redevelopment. Recent improvements to the process for granting PPAs include the creation of a model letter that acknowledges a PPA request, the development of a checklist of information required for evaluating PPA requests, and a tracking system to monitor the progress of each agreement and identify sources of potential delay.

- The Agency has successfully involved community groups in response action decisions through reforms. Community Advisory Groups have been formed at 51 sites, and 220 Technical Assistance Grants (TAG) have been awarded. The Agency has published proposed revisions to the TAG program to streamline the process for receiving and managing the grants. Final action on the proposed changes is expected during FY 2000. A fact sheet and video have been issued encouraging citizen input to the risk assessment process. Regional Ombudsmen have been placed in each Region to serve as a point of contact for stakeholders to address concerns, and internet web pages have been developed and maintained, providing valuable information to the public on a variety of Superfund topics.

The attached Reforms Overview and Scorecards for the second and third rounds of reforms provide additional information on accomplishments achieved under the reforms.

Accomplishments Through Other Program Initiatives

The success of the reforms has allowed the Agency to pursue other initiatives that have also resulted in continuous improvement. Several of these initiatives have their origin with the reforms. We did not stop examining ways to improve the program after the announcement of the three rounds of reforms. We continued to look for ways to make Super-fund a faster, fairer and more efficient program. Some of the areas where we have implemented continuous improvement include:

- The Super-fund Redevelopment Initiative (SRI) was launched during July 1999, building on the success of the brownfields reform and the national interest in brownfields redevelopment. The intent of the SRI is to help communities return

Superfund sites to productive use after they are cleaned up. Over 150 Superfund sites are in planned or actual reuse, supporting over 14,000 jobs representing over \$340 million in annual income. Over 13,000 acres of land have been restored to recreational or ecological uses. Through a program of pilots, policy enhancements, partnerships and promotion of results, EPA is working to extend this success to other sites once thought to be unusable. The SRI will document successes in the redevelopment of Superfund sites and explore additional opportunities to facilitate reuse. Ten pilots designed to involve local government officials in the Superfund process were selected during FY 1999 and up to 40 additional pilots are planned for FY 2000.

- The Agency has partnered with States and Tribes providing over \$225 million to States sharing in the management of response actions, and an additional \$29 million to develop and enhance voluntary cleanup program infrastructure. Voluntary cleanup program memoranda of agreement have been completed with fourteen States. The Agency also has tested concepts for deferring sites to States for cleanup, for allowing States the ability to select remedies at designated sites, and for providing funding and reporting flexibility through block funding arrangements. With the May 1998 release of the "Plan to Enhance the Role of States and Tribes in the Superfund Program" (OSWER Directive No. 9375.3-03), the Agency is working cooperatively with States and Tribes to expand opportunities for involvement. Eighteen pilot projects with States and Tribes have been initiated. A comprehensive evaluation of these pilots is underway and will support recommendations for next steps for national implementation during FY 2001. EPA, States and Tribes also have developed ways of dividing site work in a manner that fits the needs and interests of the parties, reducing overlap and potential duplication in favor of more complementary, mutually supportive arrangements.
- EPA has focused on refining the role of the National Priorities List (NPL). The decision on how to address the cleanup of sites depends on a range of technical, policy, and resource considerations, as well as site specific factors. Many sites can be addressed by States. In other cases, PRPs may consent to cleanup sites of potential federal interest before or after proposal to the NPL, and EPA will oversee these cleanups. For some sites, listing on the NPL may be the most appropriate action. The Agency supports a cooperative approach in working with States to secure agreement before a listing decision is made. During the past three years, the Agency has developed, implemented and evaluated a comprehensive action plan to streamline the NPL listing process. Streamlining actions include early technical assistance, streamlined documentation, more frequent NPL rules, and the availability of Headquarters' contractor support for preparation of documentation. These actions are being implemented on a full-scale basis, and

together they have reduced quality assurance review times by two thirds and increased regional and State support for NPL listing.

With the growing number of construction completion sites, post construction activities to ensure that remedies in place remain protective over the long term have become a high priority. EPA oversight is necessary to ensure that protectiveness is maintained and that post construction obligations (e.g., implementation of institutional controls) are completed. Specific actions include conducting five-year reviews, concurring in five-year reviews prepared by other Federal agencies, and ensuring that operation and maintenance activities are properly completed. EPA is completing revisions to the five-year review guidance, and Regions are working to eliminate the backlog of five-year reviews by the end of 2002. Also, EPA has drafted an important fact sheet on institutional controls to assure consistent, protective approaches are employed when institutional controls are part of Superfund remedy decisions. EPA will finalize the fact sheet following a review by State and other Federal regulators.

The February 1998 Municipal Solid Waste (MSW) Policy continues EPA's policy of exercising enforcement discretion to not pursue generators and transporters of municipal solid waste as PRPs at NPL sites. EPA will offer settlements on a unit cost basis to eligible generators and transporters of municipal solid waste who wish to resolve their potential CERCLA liability. In addition, a presumptive settlement percentage is available for municipal owners/operators of co-disposal sites.

PRIORITIES FOR FY 2000/2001

Priorities for FY 2000/2001 will focus on the following four areas:

Maintain Implementation of the Reforms

Consistent implementation of the reforms and initiatives remains the top priority for the Regions. This is critical to sustaining the gains in program performance and stakeholder perception achieved through the reforms. Stakeholder feedback suggests an ongoing level of concern with the Agency's long-term commitment to consistent implementation of the reforms. Some have suggested that reforms should be codified by statute to ensure consistent implementation. In many instances, the reform initiatives reflect a new way of doing business for the program which stakeholders have come to expect. Ensuring consistent implementation of the reforms is critical to the program given that changes to the statute are not likely in the near term.

Complete Ongoing Reforms

Completing action on ongoing reforms and initiatives remains a high priority for

Headquarters. Action will be taken to complete the following reforms:

- Reform 3-6b, Standardize Risk Assessments – Three projects are underway to develop new tools to support the risk assessment process. These include developing soil screening levels for other than residential land use exposures, procedures for establishing background concentrations for soil, and procedures for conducting probabilistic risk assessments.
- Reform 3-17, Authorize Remedv Selection by Selected States – Complete the evaluation of pilot projects initiated under this reform. Eight States have initiated a total of eleven pilots. Seven of the eight pilots are complete. States and EPA will complete the evaluation during FY 2000, and will feed the results into the broader evaluation of the State/Tribal role initiative.
- Reform 2-5b, Technical Assistance Grants – Complete the rule-making process to revise the TAG regulation which will streamline the procedures for obtaining and managing TAGs. Proposed revisions to the TAG regulation were published for public comment during 1999. The final regulation is expected during 2000.

Improvement of Selected Reforms

Improving the implementation of selected reforms is a joint priority for Headquarters and the Regions. The reform on PRP Oversight is a high priority. This reform is highly visible and has strong stakeholder interest. Feedback from stakeholders suggests ongoing frustration with Agency efforts to fully implement this reform because of perceived inconsistencies during implementation across the Regions. The initial intent of this reform was to reward capable and cooperative PRPs with reduced oversight, and encourage recalcitrant PRPs to enter into settlements with EPA by demonstrating the benefits of cooperation with the Agency. Since it was originally proposed, this reform has been reoriented to encourage an open dialogue with PRPs that already have settlements with EPA. The dialogue is intended to promote appropriate oversight that ensures the development and implementation of protective cleanups; gives careful consideration to the associated costs charged to PRPs; and maximizes EPA's recovery of oversight costs.

The Agency is committed to improving communications with PRPs about our oversight expectations to 1) facilitate an exchange of ideas on opportunities to improve or streamline EPA oversight while ensuring protective cleanups, and 2) improve EPA billing procedures for associated costs. To this end, EPA initiated accomplishments reporting during FY 1999 which will continue in FY 2000/2001, and signed an interim guidance implementing the PRP oversight reform on May 17, 2000, OSWER Directive No. 9200.0-32P. Priorities for FY 2000/2001 include:

- Completing the required elements of the reform for all targeted sites (i.e., offer to discuss EPA's oversight expectations and issue an oversight bill);
- Implementing the interim guidance and providing feedback on the usefulness of the concepts and ideas presented; and
- Engaging in a dialogue with stakeholders to identify best practices and explore new ideas to improve oversight effectiveness.

In addition, the Agency will continue working with the Department of Justice to collect millions of dollars owed by delinquent parties to Superfund settlement agreements.

Proposed Areas for Continuous Improvement

New areas proposed for implementation, to further the goal of continuous program improvement, are the following:

- **Ground Water Remediation** – As noted previously, the increasing number of sites with response actions in place has increased the post construction workload. Actions to remediate contaminated ground water, including the operation and maintenance of ground water pump/treat systems, and the maintenance of ground water monitoring and measurement networks are a critical aspect of this work. These systems must be maintained for many years into the future at substantial cost to EPA, the States, other Federal agencies, and to PRPs. EPA will develop and implement optimization tools to evaluate the performance of these systems, with a goal of reducing annual costs without a negative impact on environmental performance. Initial testing of the modeling and optimization techniques for pump/treat systems suggests that savings of 20% or more in annual operating cost may be achieved at some sites. Regions are asked to apply the screening and modeling tools at Fund-financed sites, and to set priorities to optimize system performance based on the potential for savings and resource needs. Headquarters will provide technical support as well as complete the development of the optimization protocol for ground water monitoring networks. EPA will distribute the screening and modeling tools to other Federal agencies, and to external parties operating pump/treat and monitoring systems (e.g., PRPs, States) upon request.
- **Environmental Indicators** – EPA has developed a number of environmental indicators to assess the impact of Superfund response actions on human health and the environment. These measures complement Construction Completions as measures of program performance. During FY 2000, EPA will develop and implement two new measures. Modeled after the RCRA Corrective Action environmental indicators, the measures will document Superfund sites where human exposures have been controlled so that there are no unacceptable human

exposures to contamination, and where ground water releases are controlled so contaminant migration has been stabilized. While finalizing definitions and eligibility criteria, Superfund sites meeting the criteria will be identified and quality assured. Use of the new indicators for reporting program performance should begin during FY 2001.

Transferable Covenants Transferable covenants in settlements with current owners of site property are intended to address a potential liability barrier for productive reuse of land. To enhance the marketability of Superfund sites and encourage redevelopment of these properties, EPA could offer a transferable covenant to the current owner of the property. This approach may take the form of an appendix to the owner's settlement agreement with EPA and DOJ, and include language providing the basis for transferring this valuable covenant to the next owner. The transferable covenant could be seen as a settlement incentive for a current owner that would like to sell the Superfund site property in the future.

- Indirect Cost Methodology – Revise EPA's Superfund indirect cost accounting methodology. GAO has recommended that EPA revise its indirect cost methodology to make all indirect costs available for cost recovery. GAO felt EPA's existing methodology prevented the Agency from charging responsible parties for all of the indirect costs of operating the Superfund program.

Other Financial Management Improvements • EPA has eliminated virtually all of the backlog in oversight billing. EPA is now working to improve collections on those bills by developing a streamlined and efficient processes for collection, and improving coordination among various offices involved in the collection process.

Seek Stakeholder Input on Reforms – OMB has recently approved an Agency-wide Information Collection Request (ICR) to conduct customer satisfaction surveys. The approved ICR remains in effect until 2003. Headquarters will explore using this ICR to obtain stakeholder input on selected reforms. If successful, this input can be used to improve the reforms.

Points of contact in Headquarters on Superfund Administrative Reforms are Bill Ross in the Office of Emergency and Remedial Response (703-603-8798), and Victoria van Roden in the Office of Site Remediation Enforcement (202-564-4268).